

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DANIEL RUSSELL ANDREWS, SR., )

Plaintiff, )

v. )

JOHN WETZEL, SECRETARY, SCI )  
PINE GROVE SUPERINTENDENT, )  
ERIC P. BUSH, STAFF UNIT )  
MANAGER, BEHR, CO1 PELUS, )  
CO1 ROSAS, CO1 CLAWSON, CO2 )  
REID, CO2 HETRICK, C03 )  
THOMAS, CO3 LIPENFIELD, CO4 )  
SHEEDER, SCI PINE GROVE PRC )  
STAFF DEPT. HIEDE, CORRECT )  
CARE SOLUTION (MEDICAL), )  
PAULA PRICE, and TRACI PARKES )  
(well path), )

Defendants. )

2:19-cv-1443-NR-PLD

**ORDER ADOPTING REPORT & RECOMMENDATION (ECF 99)**

This is a *pro se* prisoner civil rights action. Plaintiff Daniel Russell Andrews, Sr. was granted leave to proceed *in forma pauperis*. ECF 2. This matter was referred to Magistrate Judge Patricia Dodge for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court applicable to Magistrate Judges.

Currently before the Court is a Report & Recommendation (ECF 99) filed by Magistrate Judge Dodge on April 27, 2021, recommending that the Court: (1) grant in part and deny in part the motion to dismiss filed by the Department of Corrections Defendants (ECF 89); (2) deny the motion to dismiss filed by Correct Care Solutions (now known as Wellpath) and Traci Parkes (ECF 86); and (3) dismiss Correct Care Solutions from the case pursuant to the screening provisions set forth in 28 U.S.C. §

1915(e)(2)(B)(ii).

The Court notified the parties that, pursuant to 28 U.S.C. § 636(b)(1), objections to the Report & Recommendation were due by May 11, 2021. No party has filed objections.

Upon a *de novo* review of the record and the Report & Recommendation, the Court finds no clear error on the face of the record,<sup>1</sup> and therefore enters the following order.

**AND NOW**, this **13th day of May, 2021**, it is **ORDERED** that the Report & Recommendation (ECF 99) is adopted as the Opinion of the Court.

The Court further orders as follows:

- (1) The motion to dismiss filed by the Department of Corrections Defendants is **GRANTED** to the extent that it seeks dismissal of Secretary Wetzel, Superintendent Bush, CO Rosas, CO Clawson, Sgt. Hetrick, Lt. Thomas, Lt. Lipenfield, and CO Sheeder from this case. Those defendants are dismissed with prejudice. It is **DENIED** to the extent it seeks dismissal of Mr. Andrews's Eighth Amendment failure-to-protect claim against Unit Manager Behr, CO Pelus, and Sgt. Reid

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<sup>1</sup> An arguable basis for amending the Report and Recommendation would be to grant Mr. Andrews leave to amend his complaint for a second time to plead additional facts sufficient to support his claim that CO Rosas failed to protect him from the assault by his former cellmate. As Magistrate Judge Dodge noted, Mr. Andrews claimed "that he has other information about CO Rosas's involvement that he did not include in the Amended Complaint." ECF 99, p. 14. However, Magistrate Judge Dodge also noted that Mr. Andrews has already had two opportunities to include these allegations and he failed to do so, and thus denied him a third bite at the apple. Under these circumstances and given that Mr. Andrews did not object to any aspect of the Report and Recommendation, the Court does not find that Magistrate Judge Dodge's decision was clear error.

and dismissal of Mr. Andrews's denial-of-medical-care claim against Ms. Price.

- (2) The motion to dismiss filed by Correct Care Solutions and Ms. Parkes is **DENIED** to the extent that it seeks dismissal of the denial-of-medical-care claim against Ms. Parkes.
- (3) Mr. Andrews's claims are **DISMISSED** with prejudice against Correct Care Solutions for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii) and because his request for injunctive relief against it is moot.

BY THE COURT:

/s/ J. Nicholas Ranjan  
United States District Judge